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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

CORY LIGHTHOLDER, Petitioner/Appellee, v. BRITTANY STANLEY, Respondent/Appellant.	2 CA-CV 2010-0138 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. DO200201150

Honorable Stephen F. McCarville, Judge

AFFIRMED

Feola & Traica
By Steven Feola
Phoenix
Attorneys for Petitioner/Appellee

Brittany K. Stanley
Gilbert
In Propria Persona

E S P I N O S A, Judge.

¶1 Appellant Brittany Stanley appeals from the trial court's order modifying a parenting-time schedule and finding her in contempt.[1] For the reasons stated below, we affirm.

Factual Background and Procedural History

¶2 We view the record in the light most favorable to upholding the trial court's decision. *Duwyenie v. Moran*, 220 Ariz. 501, ¶ 2, 207 P.3d 754, 755 (App. 2009). In 2002, appellee Cory Lightholder filed a petition for emergency custody of his and Stanley's infant child, C.L., which the court granted. Following a hearing, the court ordered that C.L. remain in Lightholder's custody and provided a visitation schedule for Stanley. Several months later, the court ordered her to begin paying child support.

¶3 No further action was taken until February 2008, when Stanley filed a pro se petition to modify child support and custody, in which she sought custody of C.L. and child support from Lightholder. The parties subsequently entered into a mediation agreement in which they agreed to joint legal and physical custody of C.L. and a parenting-time schedule. In July 2008, the trial court approved the mediation agreement and ordered the parties to comply with its terms. Lightholder subsequently filed a petition seeking a child support arrearage judgment against Stanley. After a hearing, the court determined Stanley owed Lightholder almost $8,000 in child support arrearages, and ordered that it be paid at the rate of $50 per month.

[1]In her reply brief, without explanation, Stanley's name is changed to Brittany Meyer. In this decision, we will continue to use her name of record in this case, Stanley.

¶4 Approximately six months later, Lightholder filed a petition seeking sole custody of C.L., modification of Stanley's visitation time, and a finding of contempt based on Stanley's failure to make any arrearage payments. In his petition, Lightholder alleged Stanley had been intoxicated while caring for C.L. and had failed to keep sufficient food in her residence for the child. After an evidentiary hearing in April 2010, the court limited Stanley's parenting time and ordered supervised exchanges of C.L. in order to monitor Stanley's alcohol use. It also found Stanley in contempt of court for failing to make child support payments and ordered her to purge her contempt by paying no less than $100 per month. This appeal followed.

Discussion

¶5 Stanley first objects to the "remov[al of C.L.] from [her] care [in February 2008] without the court's prior order being reviewed first." To the extent we understand her argument, she appears to be contending the trial court should not have allowed Lightholder to retain custody of C.L. once she filed her petition for temporary custody. However, because C.L.'s permanent custody was resolved by the parties in a mediation agreement, which subsequently was adopted by the court, any issue regarding C.L.'s temporary custody in 2008 is moot. *See Pointe Resorts, Inc. v. Culbertson*, 158 Ariz. 137, 140-41, 761 P.2d 1041, 1044-45 (1988) (issue moot when it no longer exists due to change in factual circumstances). Furthermore, a temporary order becomes ineffective and unenforceable following entry of a final judgment or order, *see* Ariz. R. Fam. Law P. 47(M), and is not appealable, *see Villares v. Pineda*, 217 Ariz. 623, ¶¶ 10-

11, 177 P.3d 1195, 1196-97 (App. 2008) (temporary orders issued by family court in anticipation of trial not appealable).

¶6 Stanley next complains the mediator improperly gave her legal advice and was unprofessional. The mediation agreement, however, includes Stanley's signed statement that she entered into the agreement "freely and voluntarily" and was "advised by the mediator to seek legal advice from an attorney concerning the substance of this agreement." Moreover, because the trial court approved and adopted the mediation agreement in a signed order, which Stanley failed to appeal, this court is without jurisdiction to address this issue. *See Lee v. Lee*, 133 Ariz. 118, 124, 649 P.2d 997, 1003 (App. 1982) (appellate court lacks jurisdiction to address propriety of order when timely notice of appeal not filed after "entry of the order sought to be appealed").[2]

¶7 Stanley next appears to argue the trial court should not have accepted the testimony of Kristin Hansen, who was Stanley's neighbor and C.L.'s babysitter, contending that if Hansen had "an honest concern" about C.L.'s welfare, she had a duty to report it to law enforcement or Child Protective Services. Stanley, however, has failed to include in the record on appeal a transcript of the evidentiary hearing, thus we are unable to review Hansen's or any other witness's testimony and must assume the court's

[2]Stanley also argues she should have been able to meet with a different mediator after the first mediation. However, because she does not identify any place in the record where she had requested a different mediator or raised this issue in the trial court, it is waived. *See* Ariz. R. Civ. App. P. 13(a)(6) (appellant's brief must contain "parts of the record relied on"); *Winters v. Ariz. Bd. of Educ.*, 207 Ariz. 173, ¶ 13, 83 P.3d 1114, 1118 (App. 2004) (appellate argument waived if not first raised with trial court).

decision is supported by the record. *See Kline v. Kline*, 221 Ariz. 564, ¶ 33, 212 P.3d 902, 910 (App. 2009) ("'When no transcript is provided on appeal, the reviewing court assumes that the record supports the trial court's decision.'"), *quoting Johnson v. Elson*, 192 Ariz. 486, ¶ 11, 967 P.2d 1022, 1025 (App. 1998). Moreover, issues such as determining witnesses' credibility are vested in the trial court. *See Hurd v. Hurd*, 223 Ariz. 48, ¶ 16, 219 P.3d 258, 262 (App. 2009). Accordingly, Stanley has failed to demonstrate any reversible issue on this basis as well.

¶8 Stanley next contends that in a pleading filed in 2008, Lightholder misinformed the trial court about his consent for Stanley to have custody of C.L. between 2005 and 2007. But Stanley has failed to demonstrate why this factual assertion had any relevance to the court's 2010 decision modifying parenting time and finding Stanley in contempt, which is the subject of this appeal; she therefore has failed to meet her burden to demonstrate any basis for reversal. *See* Ariz. R. Civ. App. P. 13(a)(6) (appellant's brief must contain argument "with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on").[3]

¶9 Stanley further argues she was unaware until August 2010 that she was obligated to pay Lightholder $50 per month and contends she could not "pay toward an order that did not exist." This argument is belied, however, by the trial court's March 2009 order requiring her to begin paying Lightholder $50 per month. Her

[3]To the extent Stanley appears to be seeking "punishment" or sanctions against Lighthouse for "perjury and false swearing," this is not the correct forum for such claims.

recognition of her failure to pay this monthly amount, and the court's finding her in contempt for doing so, is reflected in her "Response and Objection to Motion to Alter or Amend Judgment and Form of Order," filed in May 2010, in which Stanley acknowledged she had been "ordered to pay child support at the rate of $50 monthly beginning in March of 2009." Further, because she filed her notice of appeal in July 2010, one month before she claims she discovered she owed child support, it appears she never raised this issue with the trial court, and therefore it is not properly before us. *See Winters v. Ariz. Bd. of Educ.*, 207 Ariz. 173, ¶ 13, 83 P.3d 1114, 1118 (App. 2004) (appellate argument waived if not first raised with trial court).

¶10 Stanley also argues "there were many errors in calculation of moneys owed." But the calculation of child support arrearages was the subject of the court's March 2009 order. To challenge that calculation, Stanley was required to timely appeal the order. Because she failed to do so, we are unable to revisit those calculations in this appeal. *See Lee*, 133 Ariz. at 124, 649 P.2d at 1003.

¶11 Finally, Stanley contends the trial court's order modifying her parenting time should be reversed because she "believe[s] that visits every weekend would have been more appropriate even accounting for everything that was considered." However, as set forth above, because Stanley has failed to provide a transcript of the evidentiary hearing, we must presume the record supports the court's decision. *See Kline*, 221 Ariz. 564, ¶ 33, 212 P.3d at 910.

Disposition

¶12 For the foregoing reasons, the trial court's order modifying Stanley's parenting time with C.L. and finding her in contempt is affirmed.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge